

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL ERIC FRANK,

Defendant-Appellee.

---

UNPUBLISHED

June 14, 2007

No. 270569

Macomb Circuit Court

LC No. 05-005346-FH

Before: Fitzgerald, P.J., and Sawyer and O’Connell, JJ.

MEMORANDUM.

The people appeal as of right from the trial court’s order dismissing this case. We reverse and remand this matter for trial. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with attempted second-degree home invasion, MCL 750.110a(3); MCL 750.92. On the date set for trial, defendant agreed to plead guilty to malicious destruction of property valued at \$200 or more but less than \$1,000, MCL 750.377a(1)(c)(i), in exchange for dismissal of the original charge and a recommendation that he not receive further incarceration. The trial court discovered that a prior plea had been withdrawn, and accused the parties of “hiding” that fact. The trial court demanded that John Latella, the prosecuting attorney who negotiated the plea, appear in court the following day to explain the proceedings.

Latella appeared in court the following day, but subsequently gave the file to another prosecutor, and left to make a campaign appearance. The trial court indicated that if Latella did not appear within one hour, the case would be dismissed. Latella did not appear. At that time, the trial court disclosed that earlier that morning, Latella had informed the court that he did not expect to prevail at trial. The court stated that it told Latella that the case should be dismissed, and that the court should not be expected to “take the fall” by accepting a plea to a misdemeanor. The prosecutor and defense counsel indicated that they were ready to select a jury, but the trial court dismissed the case.

A trial court’s decision to dismiss charges is reviewed for an abuse of discretion. See *People v Derror (On Reconsideration)*, 268 Mich App 67, 79; 706 NW2d 451 (2005), rev’d on other grounds 475 Mich 316; 715 NW2d 822 (2006). Whether a violation of the separation of powers has occurred is a question of law that is reviewed de novo. *People v Garza*, 469 Mich 431, 433; 670 NW2d 662 (2003).

We reverse the trial court's order dismissing this case, and remand this matter to the trial court for trial. Dismissal of a case over the prosecutor's objection is normally available as a remedy only when permitted by statute, when there is insufficient evidence, or when dismissal is required by constitutional guarantees. *People v Sierb*, 219 Mich App 127, 133; 555 NW2d 728 (1996), rev'd on other grounds 456 Mich 519; 581 NW2d 219 (1998). Here, the trial court gave no specific reasons for its decision to dismiss the case, other than the fact that Latella did not appear as required, and its apparent displeasure at the prosecutor's decision to accept a plea. While the trial court could require Latella to appear to explain various proceedings, the trial court could not require that Latella himself conduct the prosecution of the case. For the trial court to do so would be an unwarranted intrusion into the executive function. *Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672, 683-684; 194 NW2d 693 (1972). The trial court did not dismiss the case for a valid reason, *Sierb, supra*, and thus abused its discretion. *Derror, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O'Connell